

December 4, 2012

Hayward Mayor and City Council Members  
City of Hayward  
777 B Street,  
Hayward, CA 94541

**Re: Proposed Revisions to Hayward's Alcohol Regulations**

Dear Mayor Sweeney and Honorable Council Members:

We have reviewed the staff report and recommendations pertaining to happy hours, deemed approved status, and a number of other changes being proposed.

We were hoping that the City would be considering strengthening regulations to provide better 'tools' for the City in reviewing future alcohol license applications. Instead, it appears that staff is recommending reducing regulations so that there is less opportunity for public input, greater access for higher risk alcohol uses to start up and more opportunities for youth to access alcohol in restaurant/bar settings.

Although we are in support of the deemed approved policy as an effective tool for dealing with nuisance activities at establishments, it is unfortunate that it doesn't apply to the majority of legal non-conforming alcohol uses in Hayward.

I have detailed below specific sections that we think should be addressed and further scrutinized by the City Council:

- It is being proposed that ABC license types that currently require a CUP (and public hearing process) no longer will have that requirement. For example, on Pg. 22: 'Certain' alcohol uses, such as a 'wine and cheese shop' would be allowed under an Administrative User Permit (AUP) approved by staff.

Problems:

1. This type of use would require a License type 20 for off-sales of alcohol. Currently License type 20 requires a CUP public hearing process. Under this proposal, the public hearing process would be taken away.
  2. State ABC law does not allow the City to exclude beer sales from License type 20. Therefore, an applicant would have the ability to sell beer and wine. In addition, the store could also sell fortified wines. The City can't condition beer sales away.
  3. There is no definition provided of uses that would come under an AUP. 'Certain' is a vague term. Staff report says it would need to meet "certain standards", but doesn't state those standards.
- New entertainment license/permit, which will allow alcohol sales with entertainment. Although the City states that it wants to promote full-service restaurants, this proposed change does not require food, it promotes nightclubs. A dance/entertainment permit would be issued through an administrative procedure.

Problems:

1. Currently the ordinance requires nightclub applications to apply for a CUP and go through the public hearing process. This process will be taken away and replaced with an administrative procedure.
  2. The effect of this regulation would be to allow more bars/nightclubs. It will allow full-service restaurants (License type 47) to morph into bars (License type 48).
  3. No safeguards are written into the ordinance to prevent sales and service to youth when a License type 47 restaurant selling food to minors would at some point during the day turn into a bar selling only alcohol.
- Add language that prohibits the Planning Director from issuing PC&N for new bars or liquor stores in areas where there is an undue concentration of such uses. This would apply to 'liquor stores' not 'wine and cheese' shops and 'specialty boutique alcohol' stores.

Problems:

1. This isn't true since License 20 establishments ('wine' and cheese) shops would be able to be approved by the Planning Director. In addition, License 48 nightclubs/bars with entertainment can be approved by the Planning Director. Staff are simply re-naming these uses while not attempting to reduce the concentration of alcohol licenses. How many would be allowed under this ordinance?
  2. In addition, 'Specialty boutique alcohol stores' are not defined by these revisions.
- Add 'Deemed Approved Regulations' requiring that all legal nonconforming alcohol-serving establishments meet basic operating standards. If standards are not met the City can declare an establishment has lost its 'deemed approved' status, and must apply for a CUP.

Problems:

1. Most establishments are exempt. It doesn't apply to most of the legal non-conforming licensees in Hayward. For example, it won't apply to:
  - Restaurants 41 & 47 = 92.
  - Stores with > 10,000 sq. feet = 27.
  - Establishments with CUP = 26
  - Miscellaneous, hospitals, etc. = 4
2. It would only apply to these establishments:
  - Off sales convenience and liquor stores (Lic. 20 & 21) = 43.
  - Bars (with no entertainment) = 17.

*According to these revisions, Deemed Approved status would exclude all restaurants, new nightclubs (which are really bars with entertainment establishments with AUP's (wine & cheese stores and others), and grocery stores. Therefore, it would only apply to 60 licensees, or 29% of all alcohol-licensed establishments.*

We understand that staff will be providing a fiscal impact analysis associated with enforcing the alcohol regulations. We hope that it will include crime data within at least a one mile radius of downtown, since research shows that problems arising at alcohol establishments are experienced within a radius of the outlets, and not solely within the premises.

In addition, we think that the City should study the impacts specifically of full-service restaurants, since they will become increasingly bars and nightclubs, which are more intensive and result in more crimes and quality of life issues. The report acknowledges that staff has not conducted research to confirm that restaurants are operating in compliance with the standards for full-service restaurants and that no more than 5% of floor areas are being used for alcohol sales,

display and storage. Without this research, we don't think staff can indeed assume this is happening.

In summary, we are strongly opposed to the revisions that take away the public hearing processes. We think that deemed approved status should apply to ALL licenses that do not have CUP's, which is similar to other city ordinances. Why shouldn't all licenses operate under 'minimum operating standards'?

Further, since the goal of the regulations is to "strike a balance between promoting economic growth, while minimizing negative impacts", we think it would be a critical mistake to allow restaurants that serve children to be allowed to turn into bars, with no safeguards in the ordinance to prevent access to minors.

We respectfully request that the Council instruct staff to provide more balance in how the regulations are written. There should be greater protections for the public, including providing the public hearing process, protecting youth from greater alcohol access, and deemed approved status for all license types (excluding those establishments that have a CUP).

Thank you for your consideration.

Sincerely,

Linda Pratt, M.A.  
Program Director